IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRD DAY OF MARCH
TWO THOUSAND AND

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

WRIT PETITION NO : 18940 of 1995

WP.No.18940 of 1995

Between:

R.S.P.Srivastava S/o.R.Bhim Prasad, aged about 38 years, Occ: Bank Employee, KMC Campus Branch, Warangal.

..... PETITIONER

AND

Andhra Bank rep.by its General Manager (Personnel), Central Office, Koti, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue appropriate Writ, order or direction, more in the nature of writ of mandamus and declare the orders of the Respondent Bank in order No.666/20/v/35/1226, dated 16-2-1995 confirming the orders in 666/20/v/35/826 dated 20-10-1994 based on enquiry proceedings initiated on 30-11-1991 as arbitrary, illegal and unenforceable and as being violative of principles of natural justice and law and set aside the same, and consequently direct the Bank to pay the petitioner his pay and allowances including increments from the date of suspension to the date of reinstatement (dated 10-10-1991).

Counsel for the Petitioner:MS.B.MALLESWARI

Counsel for the Respondent No.: MR.NUTY RAM MOHAN RAO

WRIT PETITION NO : 21186 of 1995

Between:

R.S.P.Srivasthava, S/o.R.Bhim Pershad Srivastava, Aged about 38 years, Occ:Clerk, Andhra Bank, KMC Campus Branch, Warangal.

..... PETITIONER

AND

Andhra Bank, rep.by its General Manager, Personnel Departnment, Central Office at Koti, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue appropriate writ, order or direction more in the nature of Writ of Mandamus and declare the action of the respondent Bank in suspending the petitioner and denial of increments from 2.1.1985 to 10-10-1991 as illegal, void and arbitrary and also being violative of Para-85 r/w.para 557 of Sastry Award and also being not a authorized suspension as contemplated under clause 19 of B.P.Settlement and consequently direct the respondent Bank to pay the petitioner his due increments and all consequential benefits thereto.

Counsel for the Petitioner:MS.B.MALLESWARI

Counsel for the Respondent No.: MR.NUTY RAM MOHAN RAO

The Court made the following :

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COMMON ORDER:

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Both the writ petitions can be disposed of by a common order.

2. The order of punishment imposed on the petitioner by the management of Andhra Bank is assailed in both the writ petitions and the petitioner seeks a direction to the Bank to pay subsistence allowance and also increments. The petitioner was initially appointed as a clerk in Andhra Bank on 10-11-1979. While so, he was suspended from service on 2-1-1985. Thereafter, it appears that the matter was entrusted to CBCID and ultimately, a criminal case was filed against the petitioner, which was

taken on file by the Criminal Court in C.C.No.324 of 1989 for the offences under Sections 468, 479, 420 & 120 (B) IPC. However, the petitioner was acquitted on merits by the judgment dated 8-3-1991. Thereafter, the suspension was revoked and he was reinstated into service on
14-10-1991. However, the management again issued a charge sheet on 16-02-1995 alleging the same charges. Thereafter, an enquiry was conducted and ultimately, by an order dated
4-8-1994 passed by the disciplinary authority, the petitioner was imposed with the punishment of deferment of four annual grade increments with cumulative effect. Against the said order, the petitioner preferred an appeal. In the appeal, the punishment was modified and the petitioner was directed to suffer deferment of two annual grade increments with cumulative effect. The said order came to be challenged before this Court.

3. The learned counsel for the petitioner submits that when once the petitioner was prosecuted by a competent criminal Court, it is not appropriate for the management to again frame a charge after his acquittal on merits. Therefore, the very initiation of disciplinary proceedings is illegal and arbitrary. The learned counsel further submits that the enquiry was conducted against the principles of natural justice and also the relevant Service Rules. She also submits that the subsistence allowance was not paid to the petitioner in accordance with the rules and the increments were also not released. So long as the punishment was not imposed, he is entitled to the increments.

4. The learned counsel for the respondent-management submits that inasmuch as there is no prohibition for conducting departmental enquiry even after the acquittal, the Bank has fully justified in proceeding with the departmental enquiry and imposed the punishment.

5. The issue that arises for consideration before this Court is whether the action taken by the management is justified.

6. As can be seen from the narration of events, it is observed that the petitioner was initially suspended from service and the criminal case filed against him ended in acquittal. Thereafter, he was reinstated into service and disciplinary proceedings were initiated against him under the Conduct Rules, for the alleged misconduct. Though, it is not permissible for the management, it simultaneously proceeds with

the disciplinary action against an employee, when once the petitioner was acquitted in the criminal Court, it is always open for the management to proceed with the departmental enquiry. However, in the instant case, charges in the criminal case cannot be said to be the same in the departmental enquiry. Therefore, it does not preclude the authorities from proceedings with the enquiry.

7 . Under those circumstances, I do not find any ground to interfere with the punishment awarded by the Tribunal.

8. Coming to the question of payment of subsistence allowance, the learned counsel for the petitioner, while referring to the Judgment in Civil Appeal No.5456 of 2002, dated
5-1-2004, fairly submits that for the first three months of suspension, the petitioner is entitled to 1/3rd of the pay and allowance and thereafter, half of the pay and allowance for a period of six months and full pay and allowances after one year. Since it is stated by the learned counsel for the petitioner that no subsistence allowance was paid, I am of the view that the petitioner is entitled to the subsistence allowance as directed above.

9 . Keeping in view the directions of the Supreme Court in Civil Appeal No.5456, dated 05-01-2004, the respondent-Bank is directed to pay the subsistence allowance to the petitioner, if not already paid, within a period of two months from the date of receipt of a copy of this order. With regard to the regulation of the period of suspension and also increments, I leave it open to the authorities to consider the same and pass appropriate orders in accordance with law, after giving due notice to the petitioner.

10. The writ petitions are accordingly disposed of. No costs.

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G.Bikshapathy, J.

Dated 3rd March, 2005.

mrb

To

1. The General Manager (Personnel), Andhra Bank

Central Office, Koti, Hyderabad.

2. Two CD copies.